

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST,

Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; FRANK WATERHOUSE; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

Chapter 11

Case No. 19-34054-sgj11

Adv. Pro. No. 21-03076-sgj

STIPULATION AND PROPOSED
INITIAL RESPONSE AND
BRIEFING SCHEDULING ORDER

¹ The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

STIPULATION AND PROPOSED INITIAL RESPONSE AND BRIEFING SCHEDULE

This stipulation and initial response and briefing schedule (the “Stipulation”) is made and entered into, subject to Court approval, in the above-captioned adversary proceeding (the “Adversary Proceeding”) by and among Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust (the “Trustee”), and James D. Dondero; Mark A. Okada; Scott Ellington; Isaac Leventon; Grant James Scott III; Frank Waterhouse; Strand Advisors, Inc.; NexPoint Advisors, L.P. Highland Capital Management Fund Advisors, L.P.; Dugaboy Investment Trust and Nancy Dondero, as Trustee of Dugaboy Investment Trust; Get Good Trust and Grant James Scott III, As Trustee of Get Good Trust; Hunter Mountain Investment Trust; Mark & Pamela Okada Family Trust – Exempt Trust #1 and Lawrence Tonomura, as Trustee of Mark & Pamela Okada Family Trust – Exempt Trust #1; Mark & Pamela Okada Family Trust – Exempt Trust #2 and Lawrence Tonomura, as Trustee of Mark & Pamela Okada Family Trust – Exempt Trust #2; CLO Holdco, Ltd.; Charitable DAF Holdco, Ltd.; Charitable DAF Fund, L.P.; Highland Dallas Foundation; Rand PE Fund I, LP, Series 1; Massand Capital, LLC; Massand Capital, Inc.; and CPCM, LLC (each, a “Defendant” and collectively, the “Defendants,” and with the Trustee, the “Parties”), by and through their respective undersigned counsel.² In support of the Stipulation, the Parties respectfully state as follows:

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (“HCMLP”), filed a voluntary petition for relief under title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware. The case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11;

² This Stipulation is entered into without waiver of each Defendant’s right to challenge the basis for jurisdiction of the court in this case.

WHEREAS, on February 22, 2021, the Court confirmed HCMLP's *Fifth Amended Plan of Reorganization* [Docket No. 1943] (the "Plan") which, among other things, established the Litigation Sub-Trust (as defined in the Plan) for the benefit of the Claimant Trust Beneficiaries (as defined in the Plan).

WHEREAS, on October 15, 2021, the Trustee commenced the Adversary Proceeding by filing a complaint against Defendants [Docket No. 1] (the "Complaint");

WHEREAS, on October 18, 2021, the Clerk of Court for the United States Bankruptcy Court for the Northern District of Texas issued the *Summons In An Adversary Proceeding* (the "Summons") [Docket No. 3];

WHEREAS, on October 18, 2021, the Court entered the *Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order* (the "Order") [Docket No. 4] which, among other things, sets forth an Alternative Scheduling Order (the "Alternative Scheduling Order") that applies to the Adversary Proceeding "[i]f the [P]arties do not submit a proposed scheduling order or do not schedule a status conference with the Court to discuss the provisions and deadlines of a scheduling order within forty-five days of the filing of this [A]dversary [P]roceeding";

WHEREAS, the Parties have met and conferred as to an initial briefing schedule in the event that any party moves to dismiss the complaint, and have mutually agreed to the schedule as set forth below;

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval by the Court it shall be **SO ORDERED**:

1. Acceptance of Service. Each Defendant agrees that its undersigned counsel has accepted service of the Complaint and Summons on its behalf, and that it will not assert a defense

to the Complaint of insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5) made applicable hereto by Federal Rule of Bankruptcy Procedure 7012.

2. Applicability. This Stipulation shall apply to all Defendants, irrespective of whether the Complaint and Summons was previously served on any Defendant, or are subsequently served on any Defendant, whether in accordance with Federal Rule of Civil Procedure 4, by means of voluntary waiver or acceptance of service, or otherwise.

3. Time to Respond to Complaint and Initial Briefing Schedule. The Parties agree to the following deadlines in connection with the Defendants' responses to the Complaint:

- a. The deadline for each Defendant to answer or otherwise move against the Complaint shall be February 21, 2022 (the "Initial Response Deadline").³
- b. The deadline for the Trustee to file an opposition to any motion filed by the Defendant(s) in response to the Complaint shall be June 21, 2022;
- c. The deadline for each Defendant to file a reply to the Trustee's filing in opposition to any motion filed by Defendant(s) in response to the Complaint shall be August 15, 2022.

4. Potential Amended Complaint. Plaintiff shall be permitted to amend his complaint as a matter of course under Fed. R. Civ. P. 15 and Fed. R. Bankr. P. 7015 on or prior to April 19, 2022. In the event that Plaintiff amends his complaint pursuant to this provision, the Parties will negotiate in good faith regarding a schedule for answers to and motions to dismiss the amended complaint that is commensurate in scope with the amendment; provided, however, that Defendants shall be afforded at least 45 days to answer or otherwise move against the amended complaint. Consent to amendment under Rule 15(a) is without prejudice to the Parties' positions with respect to the effect of such amendment under Rule 15(c), all of which are expressly preserved.

³ For the avoidance of doubt, February 21, 2022 shall be the deadline for any Defendant to file a motion under Fed. R. Civ. P. 12, made applicable to this adversary proceeding under Fed. R. Bankr. P. 7012, irrespective of whether any Defendant files any other motion in response to the Complaint.

5. Proposed Scheduling Order. The Parties agree to meet and confer promptly regarding a broader proposed scheduling order in lieu of the Alternative Scheduling Order.

Dated: November 16, 2021

Respectfully submitted,

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